Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter of	)	
	)	WC Docket No. 04-36
IP-Enabled Services	)	

COMMENTS OF THE NATIONAL GOVERNORS ASSOCIATION

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In the Matter of

Review of Regulatory Requirements for IP-Enabled Services

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I. SUMMARY

- The National Governors Association (NGA) encourages the Federal Communications Commission (FCC) to use this proposed rulemaking process to consider a balanced federalism approach that recognizes the unique role that state governments play in the regulation and deployment of communication services, regardless of the technology in question. The NGA urges the FCC to avoid carving out hodgepodge regulations that vary from technology-to-technology, and defer resolution of policy concerns raised by technology convergence to the U.S. Congress.

- With regard to the classification of IP-enabled services, the Governors believe designating these services solely as "information" or an "interstate" services would inappropriately and prematurely eliminate the federal-state framework encapsulated in the 1996 Act.

- Although the 1996 Telecommunications Act did not directly address the implications of technology convergence on the proscribed regulatory structure, it did establish a national federal-state framework for communications regulation that recognized state authority to manage local competition, advance universal service, protect the public safety and welfare, ensure quality communication services and safeguard the rights of consumers.

- The established federal-state framework has worked well. This federal-state regulatory partnership has not curtailed the communications industry's development or its

investment in new technologies. Any sweeping regulatory changes that would eliminate state authority established under the 1996 Act would be contrary to the clear intent of the Congress and the public interest.

- States and territories have a role in promoting as well as regulating the communications industry in the future because they:
  - are more accessible to businesses, consumers and communications companies in local markets than federal officials;
  - have developed expertise as regulators of telecommunications;
  - have embraced pro-competitive policies that work to ensure that all citizens have access to the national telephone network and basic services;
  - have promoted the communications industry as an engine of economic development;
  - have acted as catalysts for communications competition in local markets; and
  - need appropriate regulatory authority over communications operators to achieve public safety objectives.

- Economic models demonstrate that those who control access will control the market. New technology developments—whether they are anticipated by regulators or not—will not change that. Therefore, states still have a role to ensure that no single company uses its market power to drive competitors out of local markets.

II. INTRODUCTION

The National Governors Association (NGA) respectfully submits these comments to the Federal Communications Commission regarding the classification of services and applications making use of Internet Protocol (IP).

The NGA is a non-profit organization that represents the collective voice of the nation's governors. Its members include the governors of the 50 states, the territories of American Samoa, Guam, and the Virgin Islands, and the commonwealths of the Northern Mariana Islands and Puerto Rico. States and territories are concerned with preserving their Constitutional right to protect and promote the public interest as it relates to competition, economic development, public safety, consumer protection, and universal service. All these interests could be endangered by action taken in this proceeding.

Ever since the advent of communications, state governments have had the authority to protect and promote the public interest. As a result, the United States has one of the most reliable communications systems in the world. The Governors understand and support efforts to ensure that any communications regulatory framework supports the growth and evolution of the industry. However, Governors are concerned that the results of this proceeding will severely limit their ability to continue to protect the public interest in the communications arena.

The remarkable evolution in communications technology that has occurred since the passage of the 1996 Telecommunications Act could not have been anticipated by policymakers.

Developments in the industry indicate that traditional telephone services are quickly migrating to the Internet. The 1996 Act does not address the regulatory implications of this convergence of communications technologies. As a result, there is insufficient statutory guidance that would allow for the creation of a substantially different regulatory framework for such new technologies. Even if the determination is made that such statutory guidance is unnecessary, there is no clear authority for creating a new regulatory framework that—unintentionally or not—would unravel the federal-state jurisdictional balance established in the Act. Members of the U.S. Congress have recognized this shortfall in the law, and have indicated plans for reexamining the 1996 Act next year.

In the interim, it is important to maintain the national federal-state framework established by Congress as part of the 1996 Act. This framework gave the FCC the authority to develop a broad national framework for telecommunications regulations, while granting states the authority to manage local competition, advance universal service, protect the public safety and welfare, ensure quality communication services, and safeguard the rights of consumers.

So far, this federal-state framework has worked well. Local telephone service prices are lower than they have ever been. Industry competition has created 77,000 new jobs and generated $150 billion of investment in the marketplace. Moreover, investment in the Internet has exploded. Internet access has grown from 40 million households to more than 170 million households in a few short years. States' pro-competitive policies have stimulated lower communications prices even in markets where there are few service providers. The innovative new technologies that have inspired this proposed rulemaking occurred under the auspices of this federal-state

framework, demonstrating that state regulatory management of local markets has not impeded the industry's development and willingness to invest in local markets.

In the future, the unique capabilities states have developed in the regulation of the communications industry will continue to be critical. Consider:

1. Although an environment of increased consumer choice and power may eventually develop on the application level, in particular "bring your own broadband" services, it does not currently exist. Furthermore, access to broadband infrastructure will likely continue to be controlled by relatively few operators in most local markets. As a result, the kind of competition required to stimulate a marketplace that can operate with little or no regulation and still meet the public interest has not yet emerged, nor is it immediately on the horizon.

2. States and territories are more accessible to businesses, consumers and communications companies in local markets than federal officials, and states have developed expertise as regulators of telecommunications. States and local governments have done an excellent job working with communications companies as intermediaries on behalf of citizens to ensure their telephone service is functional and to protect them from fraud and abuse. As traditional telephone services begin to migrate to the Internet, statutory and regulatory provisions should maintain the states' central role in protecting consumers.

3. States have embraced policies that provide all citizens with access to the national telephone network and basic services, or "universal service." Universal service programs ensure more affordable telephone services in rural and low income areas. Changes to the federal universal service program may be necessary to ensure that it can meet its stated goals. However, such changes should only be made with the full participation and coordination of states, which manage their own universal service programs for the benefit of their citizens and may need to transform those programs to respond to evolving technologies as well.

4. States have served as promoters of the industry as an engine of economic development, and have been the catalysts for communications competition in local markets. Any regulatory change that would undermine a state's ability to promote economic development and local competition through state policy would be inconsistent with the goals established by the 1996 Act. Furthermore, it would undermine efforts to grow state and national economies.

5. States play a central role in ensuring public safety, and as a result, need regulatory authority over communications companies. For example, the functionality, accessibility and security of a state's emergency communications infrastructure require cooperation between state government and the communications operators in that state. In addition, state and local law enforcement agencies rely heavily on electronic surveillance to investigate and prosecute criminals. And states are working diligently to promote and ensure E911 compliance. A regulatory relationship between states and communications

operators has been—and will continue to be—critical to state emergency communications systems and state law enforcement activities.

Given the key role states play in facilitating communications policy, NGA encourages the FCC to consider the potential regulatory implications of these new technologies in light of this successful federal-state partnership and offer recommendations for statutory revisions to Congress consistent with a balanced federalism approach. NGA also urges the FCC to refrain from making any sweeping regulatory changes until Congress makes its intentions known. In particular, an FCC action classifying all IP-enabled services as an "information" or "interstate" service would inappropriately and prematurely eliminate the federal-state framework encapsulated in the 1996 Act. Should the FCC classify some portion of IP-enabled services as "information" or "interstate" services, the FCC should do so in a manner that maintains states' regulatory authority.

III. CONCLUSION

States have played a critical role in protecting the public interest, and have done so in a way that has allowed the industry to grow and evolve. The implications of new communications technologies on the way we all work and live are overwhelming, and Governors look forward to embracing and encouraging these developments. However, the changes in technology do not eliminate the need to ensure that the industry is meeting the public interest, particularly since competition among access providers is likely to remain fairly limited. States and territories will

continue to be well positioned to look after that public interest while continuing to promote the development of the industry.

The nation's Governors encourage the FCC to use this proceeding to develop a vision for future communications policy that incorporates the unique capabilities and authority of states to best serve the public interest. Any new rules addressing IP-enabled technologies should adhere to the current statutorily defined federal-state framework because, while the nature of the industry may be changing, the public interest in these areas will remain the same, and states will continue to be in the best position to protect that interest. Governors look forward to working with the FCC and Congress to formulate policies that build upon the current federal-state framework to promote innovation, growth and the public interest.